

**IN THE U. S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

VIZIONWORKS, LLC,

Plaintiff,

v.

**DOYCE W. ELLENBURG, SHIRLEY F.
ELLENBURG, and SUMMIT REALTY
SOUTHEAST, LLC,**

Defendants.

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CASE NO. 2:07-CV-96-MEF

ANSWER AND COUNTERCLAIM FOR INTERPLEADER

Comes now the Defendant, Summit Realty Southeast, LLC, and in answer to the Plaintiff's Complaint states as follows:

1. Defendant admits the allegations of ¶ 1 of the Plaintiff's Complaint.
2. Defendant admits the allegations of ¶ 2 of the Plaintiff's Complaint.
3. Defendant admits the allegations of ¶ 3 of the Plaintiff's Complaint.
4. Defendant admits the allegations of ¶ 4 of the Plaintiff's Complaint.
5. With respect to ¶ 5 of the Plaintiff's Complaint, Defendant admits that on or about May 25, 2006, Vizionworks, LLC and the Ellenburg Defendants entered into a Purchase and Sale Agreement for the real property in question; that ¶ 14 of the Agreement granted Vizionworks, LLC a 150-day due diligence period and that if certain conditions specified in the Agreement were not met, the sale would be null and void and the escrow money returned to the purchaser.
6. Defendant admits the allegations of ¶ 6 of the Plaintiff's Complaint.

7. With respect to ¶ 7 of the Plaintiff's Complaint, Defendant is without sufficient information to admit or deny all of the allegations of ¶ 7 of the Plaintiff's Complaint, but states that it was informed that Vizionworks, LLC would not proceed with the closing of the property.

8. With respect to ¶ 8 of the Plaintiff's Complaint, Defendant admits that it received a letter dated September 12, 2006, from Vizionworks, LLC in which it stated that it would not proceed with the closing of the property and requested that the \$200,000.00 in earnest money be returned. Defendant further states that it received correspondence from the attorney for the Ellenburg Defendants wherein the Ellenburg Defendants contended that Vizionworks, LLC defaulted under the terms of the contract and therefore the Ellenburg Defendants demanded payment to them of the \$200,000.00 in earnest money.

9. Defendant admits the allegations of ¶ 9 of the Plaintiff's Complaint.

10. Defendant incorporates by reference its responses to ¶¶ 1-9 of the Plaintiff's Complaint as if set forth more fully herein.

11. The allegations of ¶ 11 of the Plaintiff's Complaint are addressed to the Ellenburg Defendants and not this Defendant.

12. Defendant incorporates by reference its responses to ¶¶ 1-11 of the Plaintiff's Complaint as if set forth more fully herein.

13. The allegations of ¶ 13 of the Plaintiff's Complaint are addressed to the Ellenburg Defendants and not this Defendant.

14. Defendant incorporates by reference its responses to ¶¶ 1-13 of the Plaintiff's Complaint as if set forth more fully herein.

15. Defendants admit that there presently exists a justiciable controversy as to the rights of the Vizionworks, LLC and the Ellenburg Defendants to the escrowed funds and

requests that this Court, upon a final hearing of all the evidence, issue declaratory judgment as to the competing interests of Vizionworks, LLC and the Ellenburg Defendants as to the escrowed funds.

COUNTERCLAIM FOR INTERPLEADER

Summit Realty Southeast, LLC, pursuant to Rule 22, FRCP, asserts a counterclaim for interpleader.

1. On May 25, 2006, Doyce W. and Shirley F. Ellenburg (the “Ellenburg Defendants”) and Vizionworks, LLC entered into a Purchase and Sale Agreement which called for the sale of one hundred sixty-three acres in Baldwin County, Alabama.

2. On May 30, 2006, Summit Realty Southeast, LLC received \$200,000.00 in earnest money from Vizionworks, LLC, which Summit Realty Southeast, LLC was bound to hold until sale was consummated.

3. Summit Realty Southeast, LLC, by letter dated September 12, 2006, was informed by Duke Gibbs, Managing Member of Vizionworks, LLC, that Vizionworks, LLC was canceling the Purchase and Sale Agreement with the Ellenburg Defendants, and that Vizionworks, LLC requested a refund of the earnest money deposit.

4. By letter dated September 13, 2006, Summit Realty Southeast, LLC wrote C. B. Brierty with Realty Executives, the listing broker for the Ellenburg Defendants, and stated that Vizionworks, LLC wished to exercise its right to void the Purchase and Sale Agreement; that per the Purchase and Sale Agreement the \$200,000.00 in earnest money was refundable during the due diligence period; and that the earnest money held in escrow on behalf of Vizionworks, LLC would be refunded.

5. By letter dated September 28, 2006, the Ellenburg Defendants' attorney stated that Vizionworks, LLC defaulted under the terms of the contract and demanded that the earnest money held by Summit Realty Southeast, LLC be paid to the Ellenburg Defendants.

6. Summit Realty Southeast, LLC is now left with \$200,000.00 in its escrow account, to which it makes no claim, and seeks to return to that party who is rightfully entitled to same.

Wherefore, the Defendant requests the following:

1. That it be allowed to pay the \$200,000.00 from its escrow account into the Clerk of this Court;

2. That this Court adjudge whether Vizionworks, LLC or the Ellenburg Defendants are entitled to the earnest money;

3. That upon the Clerk's receipt of the escrowed \$200,000.00 from Summit Realty Southeast, LLC, that the Court discharge Summit Realty Southeast, LLC from all liability in the premises and dismiss all claims against Summit Realty Southeast, LLC with prejudice.

/s/ Cowin Knowles
COWIN KNOWLES (KNO007)
Attorney for Defendant
Summit Realty Southeast, LLC

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ Cowin Knowles
OF COUNSEL